



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/015,399 01/29/98 HINKKANEN

A 2328-111

ROTHWELL FIGG ERNST & KURZ
555 13TH STREET N W
WASHINGTON DC 20004

HM22/0626

EXAMINER

LUBET, M

ART UNIT

PAPER NUMBER

1644

12

DATE MAILED:

06/26/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory ActionApplication No.
09/015,399Applicant(s)
HinkkanenExaminer
Martha LubetGroup Art Unit
1644

THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☒ expires 3 months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on _____ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on May 25, 2000 has been considered with the following effect, but is **NOT** deemed to place the application in condition for allowance:

- ☒ The proposed amendment(s):
- ☒ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- ☐ will not be entered because:
- ☐ they raise new issues that would require further consideration and/or search. (See note below).
 - ☐ they raise the issue of new matter. (See note below).
 - ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

- ☐ Applicant's response has overcome the following rejection(s): _____

- ☐ Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- ☒ The affidavit, exhibit or request for reconsideration has been considered but does **NOT** place the application in condition for allowance because:
See attached sheet.

- ☐ The affidavit or exhibit will **NOT** be considered because it is not directed **SOLELY** to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

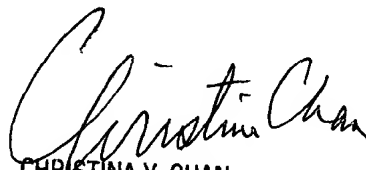
Claims allowed: noneClaims objected to: noneClaims rejected: 1-10 and 17-20

- ☐ The proposed drawing correction filed on _____ ☐ has ☐ has not been approved by the Examiner.
- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Other

Attachment to advisory action

Applicant's response and the declaration filed May 25, 2000 have been considered but are insufficient to overcome the rejections under 35 USC 103(a) set forth in the office action mailed Feb. 28, 2000. The claims are under examination as they read upon the elected species of invention which is a fusion protein comprising epitope 771-979 of IA2, amino acid residues 102-585 of GAD, and 1-110 of PPINS and cDNA encoding such a fusion protein. PPINS is pre pro insulin. Thus the invention under examination is a fusion protein comprising epitopes of IA2, GAD and preproinsulin and . The declaration filed May 25, 2000 does not provide evidence that the inventor was in possession of the invention as early as August 22, 1996 because the evidence relied upon Exhibit 3 is not a certified English translation of Exhibit 1 . If a certified English translation of Exhibit 1 is filed, it would be insufficient to overcome the rejections under 35 USC 103(a) because Exhibit 3 does not specifically disclose a fusion protein which comprises residues 1-110 of preproinsulin. The declaration discloses a fusion protein comprising GAD65/ICA512/Glioma 38kd, however, such evidence does establish that the inventor was in possession of the invention under examination.

Applicant's argument that it was not known if a protein comprising fragments of more than one antigen could fold correctly to form a three dimensional structure with epitopes exposed is not persuasive. Fusion proteins from comprising fragments of more than one antigen or protein are well known in the art as evidenced by Rogers et al. Additionally the claims do not recite a limitation wherein the fusion protein must retain the three dimensional structure of the intact protein from which the fragments comprising the fusion protein are derived.


CHRISTINA Y. CHAN
SUPERVISORY PATENT EXAMINER
GROUP 1800 1681